

Editor's note: Reconsideration granted; decision reversed -- See Dwight Tevuk, deceased, (On Reconsieration, 29 IBLA 160 (March 9, 1977))

DWIGHT TEVUK, DECEASED

IBLA 76-22

Decided November 3, 1975

Appeal from decision of Fairbanks District Office, Bureau of Land Management, rejecting Native allotment application F-2680.

Modified and remanded.

1. Alaska: Native Allotments -- Alaska Native Claims Settlement Act:
Indian Residence Allotment

Once made, an election to apply under section 14(h)(5) of the Alaska Native Settlement Claims Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), in lieu of a Native allotment application, is irrevocable.

APPEARANCES: John Scott Evans, Esq., of Alaska Legal Services Corp., Nome, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The deceased, Dwight Tevuk, filed an allotment application on July 26, 1968. He described a one-half acre plot and recited that he had initiated use and occupancy thereon on May 20, 1968. On February 5, 1973, on a form provided therefor, he elected, "To apply for my primary place of residence (home) and I withdraw my allotment application." Five months later, July 12, 1973, he filed an identical form labeled "amended application." The July selection bore the notation, "Applicant did not understand the difference between the options at the time he chose the primary place of residence." This note was signed by one Vernon Kugile, Land Coordinator, BSNC. The application purported to cancel the option exercised in February and "To have my native allotment application." Tevuk died on August 29, 1973. The Fairbanks District Office, Bureau of Land Management (BLM), rejected the

application on authority of Thomas S. Thorson, Jr., 17 IBLA 326 (1974), in which the Board held that the preference right authorized by the Native Allotment Act is personal and does not survive the death of the applicant unless the applicant had fully complied with the law and regulations, and all that remained to be done at the date of his demise was the mere administrative act of issuing an allotment certificate.

[1] The deceased's notice of initiation of use and occupancy was properly filed under the authority of the Native Allotment Act, 43 U.S.C. § 270-1 (1970), and the regulations 43 CFR Subpart 2561. The Native Allotment Act was repealed by section 18 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617(a) (Supp. III, 1973), which provided that any application for allotment pending before the Department "on December 18, 1971, may, at the option of the Native applicant, be approved and a patent issued in accordance with said [1906 Act,] in which event the Native shall not be eligible for a patent under subsection 14(h)(5) of this Act [43 U.S.C. § 1613(h)(5)]." Section 1613(h)(5), in pertinent part, provides that upon application filed within 2 years from December 18, 1971, a Native who occupied land as a primary place of residence on August 31, 1971, may be entitled to a patent.

When the deceased exercised an option for a patent under section 14(h)(5) of ANCSA and withdrew his allotment application, all rights, if any, under that application ceased and terminated. To reinstate the application would do violence to the specific mandate of Congress prohibiting filing of new applications after December 18, 1971. Cf. George Ondola, 17 IBLA 363 (1974). Thus, the so-called amended exercise of the option of July 12, 1973, could serve no purpose and was of no effect. It is immediately evident that the deceased did properly select the option afforded him by statute to have his application considered under the provision for "primary place of residence on August 31, 1971." Although subject to verification, the record indicates that appellant and his family did use the parcel described in the application on August 31, 1971, as a primary place of residence, for fishing and other purposes and had substantially improved the land by that time.

We discern no logical reason for the attempt to amend a valid election under ANCSA. As noted above, we view, and do so hold, that the deceased's February 1973 election was and

must be recognized as a proper application under section 14 of ANCSA and that such selection extinguished any prior claim to a Native allotment. The election, when considered with the prior notice of initiation of use, seemingly constitutes a valid application under section 14; it was a completed application when filed, and if all else is regular (including verification of the deceased's use), may be favorably considered in behalf of his widow. Any other result would invoke undue hardship and loss of the improvements.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision is modified as above and the case remanded for appropriate processing under section 14 of ANCSA.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Douglas E. Henriques
Administrative Judge

